UNITED STATES DISTRICT COURT
for the
WESTERN DISTRICT OF NEW YORK

DUDLEY T. SCOTT, Plaintiff, -vs- CITY OF ROCHESTER, MICHAEL L. CIMINELLI, MICHAEL FELDMAN, RANDY POTUCK, EVAN HENRY, JEFF KESTER, DONALD FLOOD, JOHN DOE #1, JOHN DOE #2, Defendants.	Civil Action No. -cv-

COMPLAINT

The Plaintiff, as and for his Complaint, alleges:

NATURE OF THE ACTION

1. This is a civil rights action brought under 42 USC § 1983 and related sections for violation of federal rights by Rochester City police officers and by the City of Rochester. The rights violated were those guaranteed by the Fourth, Eighth, and Fourteenth Amendments to the United Constitution States and by 41 USC § 1981(a). Plaintiff seeks compensatory damages, punitive damages, attorney fees, expert fees, costs and interest.

PARTIES

2. At all times herein mentioned, Plaintiff Dudley T. Scott ("Dudley") was a resident of the Western District of New York ("Western District"), temporarily living in Virginia while attending college.

3. At all times herein mentioned Dudley was a person within the jurisdiction of the United States, within the meaning of 42 USC § 1983.

4. At all times herein mentioned, Dudley was a 33-year-old African American male college student.

5. Upon information and belief, the City of Rochester is a political subdivision of the State of New York, existing within the Western District.

6. Upon information and belief, at all times herein mentioned Defendant Michael L. Ciminelli was and still is a resident of the Western District and was and still is the Chief of Police of Rochester, New York.

7. As Chief of Police for the City of Rochester Defendant Ciminelli was responsible for the supervision, training and retention of Defendants Feldman, Potuck, Henry, Kester and Flood.

8. As Chief of Police, Defendant Ciminelli was responsible for making and implementing policies, customs and practices used by law enforcement officers employed by Defendant City of Rochester regarding stops, arrests and the use of force.

9. Upon information and belief at all times herein mentioned Michael Feldman was a police officer employed by the City of Rochester and was living in the Western District.

10. Upon information and belief at all times herein mentioned Evan Henry was a policeman employed by the City of Rochester and was living in the Western District.

11. Upon information and belief at all times herein mentioned Donald Flood was a policeman employed by the City of Rochester and was living in the Western District.

12. Upon information and belief at all times herein mentioned Randy Potuck was a policeman employed by the City of Rochester and was living in the Western District.

13. Upon information and belief at all times herein mentioned Jeff Kester was a policeman employed by the City of Rochester and living in the Western District.

14. John Doe #1 is a fictitious name, used to represent one of the officers involved in the beating of Dudley, in case said officers have not been identified herein by correct name.

15. John Doe #2 is a fictitious name, used to represent one of the officer on-lookers, as more particularly described below, in case said officers have not been identified herein by correct name

JURISDICTION AND VENUE

16. This action is brought under 42 USC § 1983 and, accordingly, this Court has original subject matter jurisdiction pursuant to 42 USC § 1988, 28 USC § 1331, and 28 USC § 1343.

17. Venue in the Western District is proper under 28 USC § 1391(b), as upon information and belief, all parties live in, or at the time of the events alleged, lived in this judicial district. Also, the events giving rise to the claims occurred in the Western District.

FACTS

18. Early in the morning of August 21, 2014 Dudley was driving his car westbound on Maple Street in the City of Rochester.

19. At the same time Defendant Michael Feldman ("Officer Feldman"), a Rochester City police officer, was operating his police cruiser on the same street, in the same direction, following Dudley.

20. Upon information and belief, Defendant Evan Henry ("Officer Henry"), another Rochester Police Officer, was with Officer Feldman in the police cruiser.

21. At approximately 2:30 AM Feldman pulled Dudley over, for no

legitimate reason, and approached the driver's window of Dudley's car.

22. At approximately this time, Defendant Donald Flood ("Officer Flood"), another Rochester City police officer, arrived in a different police cruiser.

23. Upon information and belief, at a point in time presently unknown to Plaintiff Officer Kester arrived.

24. Upon information and belief, at a point in time presently unknown to Plaintiff Officer Potuck arrived.

25. After pulling Plaintiff over, Officer Feldman, with Henry standing nearby, ordered Dudley to get out of his car, and put his hands behind his back.

26. Dudley complied.

27. Feldman then handcuffed Dudley, with his hands behind his back, and pulled him around to the back of his police car.

28. At that point one of the officers, believed to be Officer Feldman, hit Dudley in the right eye with his fist.

29. After that one of the officers, believed to be Feldman, punched Dudley three or four times left eye with his fist.

30. After that one of the officers, believed to be Feldman, punched Dudley two more times in the right side of his face.

31. During the beating Dudley was also repeatedly kicked and repeatedly Tasered by officers Feldman, Henry, and Flood.

32. That at the time of the punching, beating, kicking and Tasering Dudley was restrained with his hands behind his back in handcuffs.

33. That at the time of the beating Dudley was incapable of offering resistance, as he hands were handcuffed behind his back.

34. That Dudley was knocked fully or partially unconscious by the blows to his eyes, face, and head.

35. That by virtue of the assault Dudley suffered serious physical,

mental and emotional injuries.

36. The physical injuries included a concussion, permanent blindness in the right eye, unresolved by surgery; right orbital fractures; right retinal detachment, rupture of the right eyeball ("globe"); multiple intraocular injuries including rupture of the choroid; extensive internal hemorrhage, permanently diminished vision in the left eye; and multiple contusions and abrasions.

37. Dudley offered no resistance before, during or after the beating.

38. That during the beating the officers who were not doing the beating stood by without intervening or trying to stop the abusive treatment.

39. At all times during the encounter Defendant officers were acting under color of state authority.

COUNT 1 - EXCESSIVE FORCE: 4TH AMENDMENT

-42 USC § 1983-
EXCESSIVE FORCE
PLAINTIFF v INDIVIDUAL OFFICERS

40. Dudley repeats the previous allegations.

41. At the time of his encounter with police, Dudley had a right under the Fourth Amendment to the United States Constitution to be secure in his person, including the right to be free of unconstitutional "seizure" of his person in the form of excessive force.

42. Defendants Feldman, Henry and Flood used excessive force under the circumstances against Plaintiff Dudley Scott in violation of Dudley's Fourth Amendment rights.

43. The actions of the Defendant Officers, including but not limited to beating this rear-handcuffed suspect, and in continuing to beat him and Taser him until he was unconscious and blind in one eye, was objectively unreasonable, was unreasonable under the circumstances, and violated Dudley's rights under the Fourth Amendment and under 42 USC § 1981(a).

44. The actions of defendant officers in beating this rear-handcuffed suspect, and in continuing to beat him and Taser him until he was unconscious and blind in one eye, were deliberate, willful, wanton, malicious, and sufficient to warrant punitive damages, which are hereby claimed.

45. In violating Dudley's rights under the Fourth Amendment, defendant officers were acting in their personal capacities.[1]

46. The Eleventh Amendment does not deprive this Court of jurisdiction over this Count because this Count is not against the State or its subdivisions.

47. By virtue of the foregoing Dudley has sustained severe permanent injuries, including loss of vision in one eye, has incurred medical expenses, and has suffered a loss of earnings potential.

48. In order to enforce his Fourth Amendment rights, Dudley has become liable for past and future attorney fees, for which he claims reimbursement pursuant to 42 USC § 1988(b).

49. In order to enforce his Fourth Amendment rights, Dudley has become or will become liable for expert fees, for which he claims reimbursement pursuant to 42 USC § 1988(c).

50. Dudley's losses and damages were directly and proximately caused by the violation of his Fourth Amendment rights.

51. By virtue of the foregoing, defendant officers and the City are liable to Dudley in the sum of $1.5 million in compensatory damages and $1 million in punitive damages.

COUNT 2 - EXCESSIVE FORCE: EIGHTH AMENDMENT

-42 USC § 1983-
EXCESSIVE FORCE
PLAINTIFF v INDIVIDUAL OFFICERS

52. Dudley repeats the previous allegations.

53. The Eighth Amendment to the United States Constitution prohibits cruel and unusual punishment.

54. Cruel and unusual punishment includes the unnecessary and wanton infliction of pain.[2]

55. The Eighth Amendment applies to states, including police officers, through the Due Process Clause of the Fourteenth Amendment.[3]

56. Said right is clearly established in the law.

57. Defendant officers knew or should have known of this right.

58. The actions of the defendant officers, in beating, kicking, and Tasering this rear-handcuffed suspect, and in continuing to beat, kick and Taser him until he was unconscious and blind in one eye, amounted to unnecessary and wanton infliction of pain and to cruel and unusual punishment in violation of Dudley's rights under the Eighth Amendment to the United States Constitution.[4]

59. Said actions also violated Dudley's rights under 42 USC § 1981(a).

60. The actions of defendant officers in beating this rear-handcuffed suspect, and in continuing to beat, kick and Taser him until he was unconscious and blind in one eye, were deliberate, willful, wanton, malicious, and sufficient to warrant punitive damages.

61. In violating Dudley's rights under the Eighth Amendment, defendant officers were acting in their personal capacities.[1]

62. The Eleventh Amendment does not deprive this Court of jurisdiction over this Count because this Count is not against the State or its subdivisions.

63. As a result of the violation of his rights under the Eighth Amendment, Dudley sustained general and special damages, with serious permanent injuries including blindness in one eye, emotional injuries, medical expenses, and loss of earnings potential.

64. In order to enforce his Eighth Amendment rights, Dudley has become liable for past and future attorney fees, for which he claims reimbursement

pursuant to 42 USC § 1988(b).

65. In order to enforce his Eighth Amendment rights, Dudley has become or will become liable for expert fees, for which he claims reimbursement pursuant to 42 USC § 1988(c).

66. Dudley's losses and damages were directly and proximately caused by the violation of his Eighth Amendment rights.

67. By virtue of the foregoing, defendant officers are liable to Dudley in the sum of $1.5 million in compensatory damages and $1 million in punitive damages.

COUNT 3 - EXCESSIVE FORCE: FOURTEENTH AMENDMENT

- 42 USC § 1983 -
EXCESSIVE FORCE
PLAINTIFF v INDIVIDUAL OFFICERS

68. Dudley repeats the previous allegations.

69. Pursuant to the Fourteenth Amendment to the United States Constitution Dudley had a right to substantive due process and equal protection of the laws.

70. Pursuant to the Fourteenth Amendment Dudley had a right to be free from the use of unnecessary, excessive and unreasonable force and violence.

71. Pursuant to the Fourteenth Amendment Dudley had a right to be free from violation by police of his "bodily integrity".[5]

72. The actions of defendant officers in beating this rear-handcuffed suspect, and in continuing to beat, kick and Taser him until he was unconscious and blind in one eye, were sufficient to shock the conscience and sensibilities of a reasonable person, and were a violation of Dudley's rights under the Fourteenth Amendment.

73. By virtue of the foregoing, the conduct of officers deprived Dudley

of substantive due process and equal protection of the law, in violation of the Fourteenth Amendment to the United States Constitution.

74. Said actions also violated Dudley's rights under 42 USC § 1981(a).

75. The actions of defendant officers in beating this rear-handcuffed suspect, and in continuing to beat, kick and Taser him until he was unconscious and blind in one eye, were deliberate, willful, and malicious, and were so egregious as to sufficient to warrant punitive damages.

76. In violating Dudley's rights under the Fourteenth Amendment, the defendant officers were acting in their personal capacities.[1]

77. The Eleventh Amendment does not deprive this Court of jurisdiction of this Count because this Count is not against the State or any of its subdivisions.

78. As a result of the violation of his Fourteenth Amendment rights, Dudley has suffered general and special damages, with serious permanent injuries including blindness in one eye, emotional injuries, medical expenses, and loss of earnings potential.

79. In order to enforce his Fourteenth Amendment rights, Dudley has become liable for past and future attorney fees, for which he claims reimbursement pursuant to 42 USC § 1988(b).

80. In order to enforce his Fourteenth Amendment rights, Dudley has become or will become liable for expert fees, for which he claims reimbursement pursuant to 42 USC § 1988(c).

81. Dudley's losses and damages were directly and proximately caused by the violation of his Fourteenth Amendment rights.

82. By virtue of the foregoing Defendant Officers are liable to Dudley in the sum of $1.5 million in compensatory damages and $1 million in punitive damages.

COUNT 4 - DELAY IN TREATMENT

-42 USC § 1983-
PLAINTIFF v INDIVIDUAL OFFICERS

83. Dudley repeats the previous allegations.

84. Upon information and belief, the beating took place prior to 0237 hours on the day in question.

85. In the course of the beating, defendant officers punched Dudley so hard they detached the retina of his right eye, ruptured his eyeball, and caused other serious injuries.

86. Upon information and belief, a patient with a detached retina needs to be kept very still, and needs immediate medical attention, if eyesight is to be saved.

87. After having hit Dudley so hard and so often as to detach his retina, defendant officers compounded the injury by continuing to beat him and by not getting him prompt medical attention.

88. During and after the beating, it should have been obvious to defendant officers that Dudley needed urgent medical attention, even if they did not know of the detached retina, as he was unconscious and badly bruised and swollen about the face and head.

89. Defendant officers did not take Dudley to the hospital until 0348 hours.

90. Upon information and belief, the delay in medical treatment significantly diminished Dudley's chances of regaining his eyesight and significantly contributed to his blindness.

91. The delay in medical treatment demonstrated deliberate indifference.

92. The delay in medical treatment was a violation of Dudley's rights under the Fourth, Eighth, and Fourteenth Amendments to the United States

Constitution.

93. The delay was also a violation of Dudley's rights under 42 USC § 1981(a).

94. The delay was deliberate, willful, wanton, and malicious, such that punitive damages are appropriate.

95. As a result of the violation of his Constitutional rights, Dudley has suffered serious permanent physical and emotional injuries, including blindness in one eye; has suffered diminished earning potential, and has incurred medical expenses.

96. In order to enforce his Constitutional rights, Dudley has become liable for past and future attorney fees, for which he claims reimbursement pursuant to 42 USC § 1988(b).

97. In order to enforce his Constitutional rights, Dudley has become or will become liable for expert fees, for which he claims reimbursement pursuant to 42 USC § 1988(c).

98. Dudley's losses and damages were directly and proximately caused by the violation of his Constitutional rights.

99. By virtue of the foregoing the defendant officers are liable to Dudley in the sum of $1.5 million in compensatory damages and $1 million in punitive damages.

COUNT 5 - FAILURE TO INTERVENE

-42 USC § 1983 and § 1986-
PLAINTIFF v INDIVIDUAL OFFICERS

100. Dudley repeats the previous allegations.

101. While one or two officers were beating Dudley, one or two who were not also beating him, stood by in close proximity, and failed to intervene, despite having the opportunity to do so.

102. Upon information and belief Officer Flood was an assailant for part of the encounter, and an onlooker for part.

103. Upon information and belief, Officer Kester and Officer Potuck were onlookers.

104. It was or should have been obvious to the onlooker officer(s) that the conduct of the assailant officers was unlawful, unwarranted, unreasonable, excessive, unnecessary, and unconstitutional.

105. Yet the onlooker officers failed to intervene.

106. The failure to intervene was a violation of Dudley's constitutional rights[6] and in particular a violation of Dudley's rights under the Fourth, Eighth, and Fourteenth Amendments to the United States Constitution.[7]

107. The failure to intervene was also a violation of Dudley's rights under 42 USC § 1981(a).

108. A cause of action for failure to intervene is specifically recognized at 42 USC § 1986.

109. The failure to intervene was deliberate, willful, wanton, and malicious, such that punitive damages are appropriate.

110. As a result of the violation of his Constitutional rights, Dudley has suffered serious permanent physical and emotional injuries, including blindness in one eye; has suffered diminished earning potential, and has incurred medical expenses.

111. In order to enforce Constitutional rights, Dudley has become liable for past and future attorney fees, for which he claims reimbursement pursuant to 42 USC § 1988(b).

112. In order to enforce his Eighth Amendment rights, Dudley has become or will become liable for expert fees, for which he claims reimbursement pursuant to 42 USC § 1988(c).

113. Dudley's losses and damages were directly and proximately caused by

the violation of his Constitutional rights.

114. By virtue of the foregoing, Defendant officers are liable to Dudley in the sum of $1.5 million in compensatory damages and $1 million in punitive damages.

COUNT 6 - CONSPIRACY

42 USC § 1985(3)
PLAINTIFF v OFFICERS

115. Dudley repeats the previous allegations.

116. Dudley is an African American.

117. Upon information and belief Rochester City Police engage in a pattern of abuse and violence against African Americans, in violation of the Constitutional rights of said minority.

118. Upon information and belief, the pattern is so widespread that constructive knowledge by supervisors and policy makers, including Chief Ciminelli, may be inferred.[8]

119. In beating Dudley in the fashion described, and in delaying medical treatment, defendant officers conspired to deprive Dudley of constitutional rights, and did deprive him of such rights, pursuant to their conspiracy.

120. The constitutional deprivations were consistent with a pattern and practice of abuse.

121. The rights which were violated by the implementation of the conspiracy include the right under the Fourth and Fourteenth Amendments to be free from excessive force; the right under the Eighth Amendment to be free from cruel and unusual punishment; the right under the Fourteenth Amendment to substantive due process of law and equal protection of the laws, and privileges and immunities;; the right to be free of unreasonable seizure of one's body at to be secure in one's person under the Fourth and Fourteenth Amendments; and the right to full and equal benefit of laws under 42 USC § 1981(a).

122. Defendant officers acted in furtherance of the conspiracy by beating and kicking and Tasering Dudley in the fashion described, in failing to intervene to stop the unconstitutional abuse, and in acting with deliberate indifference in obtaining medical care for Dudley.

123. As a result of the conspiracy, Dudley has suffered serious permanent physical and emotional injuries, including blindness in one eye; has suffered diminished earning potential, and has incurred medical expenses.

124. The conduct of defendant officers was deliberate, willful, wanton, and malicious, such that punitive damages are appropriate.

125. Dudley's losses and damages were directly and proximately caused by the conspiracy.

126. By virtue of the foregoing defendant officers are liable to Dudley in the sum of $1.5 million in compensatory damages and $1 million in punitive damages.

COUNT 7 - RACIAL DISCRIMINATION

-42 USC § 1983-
-42 USC § 1981(a)-
PLAINTIFF v CITY AND CIMINELLI

127. Dudley repeats the previous allegations.

128. At all times herein mentioned Plaintiff had a right to be free from racial discrimination by government officials.

129. Upon information and belief, Rochester City Police engage in a pattern of abuse and violence against African Americans, in violation of the Constitutional rights of said minority.

130. The pattern is so widespread that constructive knowledge by supervisors and policy makers, including Chief Ciminelli, may be inferred.[8]

131. Upon information and belief, the City has taken inadequate steps or no steps to control the abuse.

132. Upon information and belief, the Professional Standards Section

rarely, if ever, finds any wrongdoing on the part of fellow-officers, and serves to condone rather than deter abusive conduct.

133. Upon information and belief the individual defendant officers were engaging in racial discrimination in beating Dudley and in delaying medical treatment.

134. Upon information and belief, in beating Dudley and in delaying medical treatment for him, the individual defendant officers were acting in furtherance of the pattern and practice of racial discrimination.

135. Dudley's damages were directly and proximately caused by the policy of racial discrimination, and by the acquiescence of policy making officials, including Chief Ciminelli, in the pattern of unconstitutional conduct by police.[9]

136. By virtue of the foregoing, the City and Chief Ciminelli are liable to Dudley in the sum of $1.5 million in compensatory damages.

COUNT 8 - FAILURE TO SCREEN, TRAIN AND SUPERVISE

-42 USC § 1983-
PLAINTIFF v CITY OF ROCHESTER

137. The Plaintiff repeats the previous allegations.

138. Upon information and belief Rochester police engage in a pattern and practice of using excessive force against citizens, particularly against African American men.

139. Upon information and belief, the pattern is so widespread that constructive knowledge by supervisors and policy makers, including Chief Ciminelli, may be inferred.

140. Upon information and belief the City of Rochester has failed to adequately screen officer candidates for their propensity for violent behavior.

141. Upon information and belief, the City has failed to sufficiently train

defendant officers,[10] including those who beat Dudley Scott.

142. Upon information and belief, the City has failed to discipline, or to properly discipline, offending officers who engaged in abusive treatment of citizens in the past, thereby allowing such treatment to continue.

143. Upon information and belief, the City has failed to supervise officers.

144. Upon information and belief, the Professional Standards Section rarely, if ever, finds any wrongdoing on the part of fellow-officers, and serves to condone rather than deter abusive conduct.

145. The failure of the chief and other supervisory personnel to screen, train, discipline, and supervise amounts to official condonation of abusive treatment.

146. Defendant City of Rochester and Defendant Ciminelli contributed to the constitutional violations by creating and/or enabling a custom and practice of excessive force, especially against African American men.

147. By virtue of the foregoing Defendant City of Rochester and its Police Department have shown a deliberate indifference to rights of citizens, including Dudley Scott.

148. As a direct and proximate result of failure to screen, train, and supervise police officers, Dudley has suffered serious permanent physical and emotional injuries, including blindness in one eye; has suffered diminished earning potential, and has incurred medical expenses.

149. In order to enforce his rights, Dudley has become liable for past and future attorney fees, for which he claims reimbursement pursuant to 42 USC § 1988(b).

150. In order to enforce his Eighth Amendment rights, Dudley has become or will become liable for expert fees, for which he claims reimbursement pursuanat to 42 USC § 1988(c).

151. The failure to screen, train, and supervise is a direct and proximate

cause of Dudley's injuries and damages.

152. By virtue of the foregoing, Chief Ciminelli and the City are liable to Dudley in the sum of $1.5 million in compensatory damages.

QUALIFIED IMMUNITY

153. Dudley repeats the previous allegations.

154. Defendants beat Dudley while he was handcuffed with his hands behind his back, and continued to beat him and kick him and Taser him until he was unconscious and blind in one eye.

155. Said conduct was objectively unreasonable.

156. Said conduct violated clearly established constitutional rights, including, including the right under the Fourth Amendment to be secure in one's person and free of unreasonable search and seizure;[11] the right under the Eighth Amendment to be free from cruel and unusual punishment; and the right under the Fourteenth Amendment to due process and equal protection of the laws.

157. The right of an individual not to be subjected to excessive force has long been clearly established.[12]

158. A reasonable person would have recognized the right of an individual, even one under arrest, to be free from a gratuitous severe beating.

159. A reasonable police officer would have recognized the right of an individual, even one under arrest, to be free from a gratuitous severe beating.

160. By virtue of the foregoing, Defendants waived and forfeited any qualified immunity they may have had.

DEMAND FOR JURY TRIAL

161. Plaintiff hereby demands a jury trial of all issues.

DEMAND FOR RELIEF

Wherefore, Plaintiff Demands Judgment against the Defendants as follows:

A. Upon Count 1, judgment in favor of Dudley Scott against Michael Feldman, Randy Potuck, Evan Henry, Donald Flood and Jeff Kester ("defendant officers"), jointly and severally, in the sum of $1.5 million in compensatory and $1 million punitive damages;

B. Upon Count 2, judgment in favor of Dudley Scott against defendant officers, jointly and severally, in the sum of $1.5 million in compensatory and $1 million punitive damages;

C. Upon Count 3, judgment in favor of Dudley Scott against defendant officers, jointly and severally, in the sum of $1.5 million in compensatory and $1 million punitive damages;

D. Upon Count 4, judgment in favor of Dudley Scott against defendant officers, jointly and severally, in the sum of $1.5 million in compensatory and $1 million punitive damages;

E. Upon Count 5, judgment in favor of Dudley Scott against defendant officers, jointly and severally, in the sum of $1.5 million in compensatory and $1 million punitive damages;

F. Upon Count 6, judgment in favor of Dudley Scott against all defendants, jointly and severally, in the sum of $1.5 million in compensatory and $1 million punitive damages;

G. Upon Count 7, judgment in favor of Dudley Scott against all defendants in the sum of $1.5 million in compensatory damages;

H. Upon Count 8, judgment in favor of Dudley Scott against the City of Rochester and Michael Ciminelli in the sum of $1.5 million in compensatory damages.

I. Upon all Counts, the taxable costs of this Action;

J. Upon all Counts, Attorney fees under 42 USC § 1988(b);

K. Upon all Counts, expert witness fees under 42 USC § 1988(c); and

L. Upon all Counts, interest if appropriate.

Dated: December 28, 2016
Pultneyville, New York

DAVID A. JOHNS
(WD0003577)
Attorney for Plaintiff
4139 Mill Street, Box 114
Pultneyville, New York 14538
daj@dajlawfirm.com
T: (315) 904-4030
F: (315) 904-4032

---

[1] *Kentucky v Graham,* 105 U.S. 3099 (1985)
[2] *Gregg v Georgia,* 428 U.S. 153, 173 (1976).
[3] *Rhodes v Chapman,* 452 U.S. 337 at 344, 45 (1981); Robinson v California, 370 US 660 (1962).
[4] *Sims v Artuz,* 230 F3d 14 (2d Cir, 2000).
[5] *Washington v Glucksberg,* 512 U.S. 702 (1997)
[6] *Anderson v Branen,* 17 F3d 552, 557 (2d Cir, 1994)
[7] *Simcoe v Gray,* 577 Fed Appx 38 (2d Cir, 2014)
[8] *City of Canton v Harris,* 489 US 378 (1989)
[9] *Ware v Jackson,* 150 F2d 873 (8th Cir, 1996)
[10] *Board of County Commissioners of Bryan County, OK v Brown,* 520 U.S. 397, 411 (1997).
[11] *Harris v City of Circleville,* 583 F3d 356 (6th Cir, 2009).
[12] *Calamia v New York,* 879 F2d 1025 (2d Cir, 1989).